

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

SEP 12 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio ServicesCC Docket No. 94-54
RM - 8012

To: The Commission

COMMENTS OF TRIAD CELLULAR

Triad Cellular ("Triad"), by its attorneys, hereby submits its Comments on the Commission's Notice of Proposed Rule Making and Notice of Inquiry ("the Notice")^{1/} in the above-captioned proceeding. In the Notice, the Commission tentatively decided to extend its equal access obligations to non-BOC cellular licensees, and it sought comment on the costs and benefits of imposing such obligations. In response, Triad opposes the Commission's tentative conclusion. It urges the Commission to reevaluate its recommendations regarding non-BOC cellular providers -- particularly small carriers such as Triad^{2/} -- for the following reasons.

^{1/} FCC 94-145, released July 1, 1994.

^{2/} Triad owns and operates Block A cellular systems in Rural Service Areas in Utah, Minnesota, Texas and Oklahoma. As a general matter, the Triad markets are geographically extensive but not heavily populated.

No. of Copies rec'd 074
List A B C D E

**I. There Is No Justification for Regulating
BOC and Non-BOC Cellular Facilities Similarly**

1. There is no legal or public policy justification for extending the equal access requirement on BOC cellular operators^{3/} to non-BOC cellular operators. The courts have held that BOC cellular operators must provide equal access to interexchange carriers ("IXC") pursuant to the Bell System divestiture decree (the "Modification of Final Judgement" or "MFJ"). The main reason for imposing this requirement was to minimize anti-competitive behavior by any BOC since its unfettered control of the "bottleneck" facility could prevent customers from accessing the long distance service of their choice, and thereby prevent interexchange carriers from accessing their potential customers. Since these equal access requirements were imposed pursuant to the voluntary MFJ, only the cellular facilities affiliated with BOCs are currently required to comply with equal access obligations.

2. The Commission has tentatively concluded that these equal access obligations should now apply to all cellular providers. There is, however, no justification for expanding this requirement to non-BOC cellular providers. The imposition of equal access rules on BOC cellular affiliates was necessary to protect consumers and ensure

^{3/} "BOC" operators are cellular operators affiliated with a Bell Operating Company ("BOC").

competition within the market. However, as Commissioner Barrett has noted, the main justification for imposing equal access obligations on BOC cellular operators does not exist with respect to non-BOC cellular operators.^{4/} There is no need to counter "bottleneck facility" market power in non-BOC cellular operators because there is no history of anti-competitive behavior or bottleneck facilities among these providers. There is no purpose in mechanically extending rules designed to combat monopolistic practices to a sector of the industry that has no such monopolies. As Commissioner Quello has noted, regulatory structures "borne of the MFJ, itself the product of a vastly different market structure" should not be haphazardly grafted onto services which have developed in different market environments.

**II. There Is An Increasingly Competitive
Market for Cellular and Cellular-Type Services
And This Will Ensure Consumers Have
Ample Choices in Interexchange Service and Price**

3. In the Notice, the Commission stated that it would weigh several factors before deciding whether to impose an equal access obligation on particular types of mobile service providers, and before determining whether such requirements would be in the public interest. The

^{4/} See Notice, Separate Concurring Statement of Commissioner Andrew C. Barrett, 1994 Lexis 3181, *137.

presence or absence of "market power"^{5/} is one of these factors. The Commission tentatively decided to impose equal access obligations on all cellular providers because it found that the cellular market is not yet fully competitive and that all CMRS providers other than cellular, currently lack market power.

4. However, recent trends in the market suggest that the introduction and growth of new services is creating a more competitive industry with an increasing number of service providers. For example, both broadband PCS and wide-area SMR will offer services which are similar to, and compete, with cellular. As more providers enter the marketplace, any "market power" enjoyed by the non-BOC cellular affiliates will only decrease. This trend suggests that increased competition and increased consumer choice will occur in the market even if equal access regulations are not imposed on providers.

^{5/} The Commission noted in the Notice, at n. 86, that the Justice Department has defined "market power" to mean "the ability profitably to maintain prices above competitive levels for a significant period of time..." The DOJ also noted that "sellers with market power also may lessen competition on dimensions other than price, such as product quality, service or innovation."

**III. The Public Benefits Sought
By the Commission Can and Should Be Achieved
Without Extending Equal Access Obligations to
Non-BOC Cellular Providers**

5. The Commission noted that imposing equal access obligations on cellular providers would provide several benefits including: (1) increased consumer choice and reduced long distance prices; (2) greater "end user" access to the networks; and (3) IXC development of more discounted long distance service offerings. However, these benefits can be achieved simply by allowing the natural development of a competitive market. For example, in an expanding and increasingly competitive market, the various CMRS providers will undoubtedly seek to appeal to customers using a variety of innovative service, pricing and other options. This will provide the opportunity and incentive for interexchange carriers to develop and offer their most economical and responsive services to cellular providers as they compete to provide long distance traffic. This trend will create expanding opportunities for end users to select, even if indirectly, among the services offered by various interexchange users. Since the natural course of competition will compel cellular carriers to offer the interexchange choices valued by their customers, increased regulation should not be imposed to accomplish the same task. Competing market forces should be allowed to resolve this matter.

6. In fact, seeking to accomplish the Commission's goals through regulation rather than natural competition could impose significant hardships on cellular providers without providing a commensurate public benefit. The imposition of equal access requirements would create substantial, yet unnecessary, costs for cellular licensees. Implementing equal access regulations would require cellular carriers to assume numerous costs such as: installing software in their switches to route traffic to a customer's preferred interexchange carrier; changing the type of interconnection from the LEC;^{6/} and establishing customer education and presubscription programs. Each of these efforts would entail considerable financial costs for the carrier. For example, Triad believes that it might have to replace one or more of the four switches it has if equal access rules were adopted -- a cost that Triad may be unable to bear.

7. Such costs would be especially injurious to small and/or rural carriers, such as Triad, which provide service in sparsely populated RSAs. Though Triad's licenses cover a large geographic area, there is generally a small population within this area. It would be both inefficient and costly to implement such sweeping and costly changes for a relatively small number of users. High costs could therefore force some smaller carriers out of business. For

^{6/} Notice at ¶ 40.

those carriers that did survive, the costs associated with implementing and maintaining the equal access requirements would likely have to be passed along to consumers in the form of significantly higher prices. Furthermore, smaller carriers, such as Triad, would not be able to spread the costs imposed by equal access among a large number of users. This outcome would greatly reduce any potential public benefit to rural consumers.

8. A related problem is created because some licensees, such as Triad, are facing a series of five year fill in periods. These build out requirements will entail large commitments of financial and personnel management resources. The associated costs and personnel commitments, coupled with those created by any new equal access regulatory requirements, would greatly undermine the ability of small and rural carriers to provide service to consumers. These results would greatly reduce the value of the public benefits expected by the imposition of equal access obligations.

9. In addition, the Notice suggests that lower consumer prices would result if end users were allowed to chose their interexchange carrier. However, lower prices might not occur if equal access regulations are imposed. In fact, the opposite could actually result. Currently, cellular carriers can secure better prices from interexchange carriers than can individual end users because

cellular operators can negotiate "bulk service" deals or volume discounts with the IXC. Equal access regulations would prohibit such arrangements. In addition, many cellular providers offer pricing plans that provide service at a set rate over an expanded calling area. If service providers are required to disaggregate long distance calls within their wide area plans, consumers will end up paying additional IXC charges plus air time, resulting in higher overall charges. In addition, many rural carriers cover large geographical markets that include multiple LATAs. Carriers can offer service within this area without a long distance toll. Triad, for example, operates a wide area network in Texas and Oklahoma which offers local calling across five LATAs. Changes which reconfigure cellular service areas could therefore raise prices for rural consumers by turning local calls into long distance calls.

IV. If Equal Access Obligations Are Imposed,
There Should Be An Exemption
for Rural Cellular Providers

10. If the Commission adopts equal access obligations for cellular carriers, it should also create a waiver or exemption for carriers in rural or low density areas. Many rural areas have only one -- or in some cases no -- point of presence with interexchange carriers. As a result, implementation of the equal access obligations would be extremely difficult, if not impossible, for many rural

carriers. This factor would also significantly increase the implementation costs for rural carriers. Accordingly, Triad urges the creation of a waiver for rural carriers.

11. However, if the Commission finds that the equal access obligations should apply to rural carriers, these rules should be phased in gradually. A longer phase in period is especially important for small and/or rural providers because these licensees may lack the management, personnel and financial resources to complete such massive modifications at one time. Such overwhelming requirements could disrupt current network build-out plans and thereby lead to reduced customer service.

**V. If Equal Access Obligations Are Imposed
On Non-BOC Cellular Licensees, Similar Requirements
Should Be Imposed on Broadband PCS and Wide-Area
SMR Licensees**

12. If equal access obligations are imposed on non-BOC cellular providers, then these requirements should also be applied to services competing with these licensees, such as broadband PCS and wide-area SMR. Although broadband PCS is not yet operational, it is expected to offer services and capabilities which will eventually compete with the cellular service. Wide-area SMR is also expected to compete with the cellular service. Therefore, to comply with Congressional intent to maintain regulatory parity among functionally equivalent services, and to ensure that neither broadband PCS, nor wide-area SMR receives a regulatory

advantage, any equal access requirements applied to the cellular service should also be applied to broadband PCS, wide-area SMR, and any other similar or competing services.

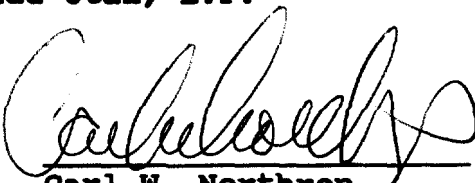
VI. Conclusion

13. There is no legal or public policy justification for extending the equal access rules that currently apply to BOC cellular licensees to non-BOC cellular licensees. The Commission has cited several benefits that it believes will result from imposing equal access requirements on non-BOC cellular providers. Triad believes, however, that imposition of these requirements will cause detrimental effects which will significantly reduce any resulting public benefits. Triad also believes that the current development of the market will provide enough competition to ensure that consumers for cellular type services can choose from a variety of carriers, as well as service and price offerings within the market. Therefore, the Commission should decline to adopt equal access rules for non-BOC cellular operators. If, however, the Commission does impose these rules on all cellular providers, it should ensure that services which will compete

with cellular will be treated in a consistent regulatory manner.

Respectfully submitted,

Triad Utah, L.P.

By: 
Carl W. Northrop
Its Attorney

Bryan Cave
Suite 700
700 13th St., N.W.
Washington, DC 20005
(202) 508-6000

September 12, 1994

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 12th day of September, 1994, caused copies of the foregoing **Comments of Triad Cellular** to be delivered by hand, courier charges prepaid, to the following:

***Chairman Reed Hundt
Stop Code 0101
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554**

***Commissioner Andrew C. Barrett
Stop Code 0103
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554**

***Commissioner Rachelle Chong
Stop Code 0105
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554**

***Commissioner James H. Quello
Stop Code 0106
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554**

***Commissioner Susan Ness
Stop Code 0104
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC. 20554**

***John Cinko, Chief
Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, DC 20554**

*A. Richard Metzger, Chief
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 500
Washington, DC 20554


Tana Christine Maples